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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CITY OF FOUNTAIN VALLEY, Plaintiff and Appellant, v. KEELY BOSLER, AS DIRECTOR, ETC., Defendant and Respondent; ORANGE COUNTY MOSQUITO AND VECTOR CONTROL DISTRICT et al., Real Parties in Interest and Respondents.	C081661 (Super. Ct. No. 34201380001564CUWMGDS)

This appeal arises from the dissolution of redevelopment agencies. The Department of Finance disallowed a $5.7 million transfer which a former redevelopment agency made to its sponsoring entity, the City of Fountain Valley. The City claimed the Department erred because the transfer was required and authorized by statute, and, as a

result, the transfer was an "enforceable obligation" which the Department could not invalidate. The trial court disagreed with the City's arguments, as do we. We affirm.

FACTS AND PROCEEDINGS

A. *Statutory Background*

While they existed, redevelopment agencies relied on tax increment financing as their source of revenue. (Cal. Const., art. XVI, § 16; Health & Saf. Code, § 33670 (subsequent section references are to the Health and Safety Code unless stated otherwise).) "Under this method, those public entities entitled to receive property tax revenue in a redevelopment project area (the cities, counties, special districts, and school districts containing territory in the area) are allocated a portion based on the assessed value of the property prior to the effective date of the redevelopment plan. Any tax revenue in excess of that amount—the tax increment created by the increased value of project area property—goes to the redevelopment agency for repayment of debt incurred to finance the project. [Citations.]" (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 246-247 (*Matosantos*).)

State law limited how a redevelopment agency could use its tax increment revenue. The funds could be spent only in the redevelopment project area from which the increment was generated. (§ 33485.) However, project areas could be merged, allowing the increment revenue from one project area to be used in another project area, if significant blight remained in one project area and the blight could not be eliminated without merging the areas and the receipt of increment revenue. (§ 33485.)

The Legislature enacted statutes to abolish redevelopment agencies, but in doing so, it provided ways for an agency's outstanding financial obligations to be met.[1] These

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[1] For a detailed explanation of redevelopment and its dissolution, see *Matosantos, supra,* 53 Cal.4th at pages 242-248, 250-252.

statutes, referred to as the Dissolution Law, contain two components. (Assem. Bill No. 1X 26 (1st Ex. Sess. 2011-2012, ch. 5) adding Stats. 2011, ch. 5.) The first, the freeze component, became effective on June 29, 2011. It froze redevelopment agency assets and prohibited redevelopment agencies from engaging in new business. (§ 34163.)

Of importance here, the freeze component allowed redevelopment agencies to continue to make payments for, and perform obligations imposed by, "enforceable obligations" until other agencies took over. (§ 34169, subds. (a), (b).) The statute defined "enforceable obligations" as specific types of financial obligations and commitments the redevelopment agency had incurred that remained outstanding, such as bonds, loans, contracts, judgments, and, of relevance here, "obligations imposed by state law[.]" (§ 34167, subd. (d)(3).)

Also, as part of the freeze component, the Legislature declared that any asset transfer between a redevelopment agency and the local agency that created the redevelopment agency (the sponsoring entity) that occurred after January 1, 2011, was "unauthorized." (§§ 34167.5, 34171, subd. (n); see *City of Culver City v. Cohen* (2017) 14 Cal.App.5th 1, 13-14.)

The Dissolution Law's second component is the dissolution component. It became operative on February 1, 2012. (§ 34170, subd. (a); *Matosantos, supra,* 53 Cal.4th at pp. 274-276.) The dissolution component dissolved all redevelopment agencies and transferred their authority, rights and powers as well as control of their assets to successor agencies. (§§ 34171, subd. (j), 34173, subds. (b), (i); 34175, subd. (b).) The dissolution component then required successor agencies to remit all unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to other local taxing agencies. (§§ 34177, subd. (d), 34183, subd. (a)(4), 34188.)

The dissolution component required successor agencies to continue to make payments for and perform the redevelopment agency's enforceable obligations.

(§ 34177, subd. (a).) Obligations imposed by state law continued to be recognized as enforceable obligations. (§ 34171, subd. (d)(1)(C).) However, for purposes of the dissolution component, the Legislature modified the definition of an "enforceable obligation." Under the revised definition and with exceptions not relevant here, any "agreements, contracts, or arrangements" between the former redevelopment agency and its sponsoring entity were deemed not to be enforceable obligations and to be invalid and not binding on the successor agency. (§§ 34171, subd. (d)(2), 34178, subd. (a).)

The Dissolution Law includes two different methods by which the state may recover unencumbered funds that a redevelopment agency transferred to its sponsoring entity after January 1, 2011. Commentators have referred to these methods as the "claw back" provisions. (Miller & Starr, Cal. Real Estate (4th ed.) § 30:1.)

The one method at issue here is known as a due diligence review. It was adopted in 2012 as part of a set of amendments to the Dissolution Law. (Assem. Bill No. 1484 (2011-2012 Reg. Sess.) adding Stats. 2012, ch. 26, §§ 17, 40, "AB 1484.") To enforce successor agencies' obligations to remit all unencumbered redevelopment agency funds to the county auditor-controller, AB 1484 required a successor agency to hire an accountant to review its assets and determine the unobligated balances available to be remitted. (§ 34179.5, subd. (a).)

As part of the review, the accountant identified the dollar value of cash and assets the redevelopment agency and its successor agency transferred to the sponsoring entity from January 1, 2011, through June 30, 2012. (§ 34179.5, subd. (c)(2).) The review had to provide documentation of any "enforceable obligation" that required the transfer to the sponsoring entity. (§ 34179.5, subd. (c)(2).) The review also had to disclose the amounts of those transfers were available for allocation to other taxing entities if an enforceable obligation to make the transfers did not exist. (§ 34179.5, subd. (c)(6).)

The successor agency submitted the results of the due diligence review to its oversight board and to the Department, and each determined the assets available for

remittance. (§ 34179.6, subds. (b), (c), (d).) The two entities could meet and confer if they reached different conclusions, but once the Department's determination was final, AB 1484 required the successor agency to transfer the amounts designated by the Department to the county auditor-controller. (§ 34179.6, subds. (e), (f).)[2]

B. *Redevelopment Agency's Transfer of Funds to the City*

The City's redevelopment agency, Fountain Valley Agency for Community Development (the redevelopment agency), proposed in 1976, and the City approved, redevelopment plans for two project areas; the Industrial Area Redevelopment Project and the City Center Redevelopment Project. The Industrial Area project was active when the Dissolution Law was adopted, and it was planned to have remained active until 2026.

The City Center project's redevelopment plan capped the amount of increment revenue that could be derived from that project at $16,290,000. The Agency reached this cap by fiscal year 2003-2004. In fiscal year 2006-2007, the agency paid off all of its outstanding obligations and indebtedness on the City Center project, and the project became inactive and ceased to function. After all debts related to the City Center project were paid, $5,655,513 remained as surplus funds. The redevelopment agency retained these funds for approximately four years until February 15, 2011, when it transferred them to the City. The City then transferred the money to its general fund.

As part of winding up the redevelopment agency's affairs, the agency's successor agency conducted its AB 1484 due diligence review and identified the February 2011 surplus funds transfer. It claimed the transfer was one of the former redevelopment

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[2] The second "claw-back" method enlisted the services of the state controller. It required the controller to conduct an asset transfer review, determine whether a redevelopment agency transferred any assets to its sponsoring entity after January 1, 2011, and, if it did, order the sponsoring entity to return the assets to the successor agency, with some exceptions not relevant here. (§ 34167.5.) In this matter, the state controller, as a result of the Department's due diligence review and decision, determined no further action was necessary.

agency's enforceable obligations because it was an obligation imposed by state law. Specifically, the successor agency claimed section 33604 required the redevelopment agency to transfer the surplus funds from an inactive project area to the City. Section 33604, adopted in 1965 long before redevelopment agencies were dissolved, reads: "If an *agency* ceases to function, any surplus funds existing after payment of all its obligations and indebtedness shall vest in the community." (Italics added.)

The Department disagreed with the successor agency's characterization and disallowed the transfer. After reciting section 33604, it explained: "While the former [redevelopment agency] has ceased to function, its obligations and indebtedness have not been paid off. Additionally, . . . section 34188 details how property tax revenues and other moneys, which would include unencumbered balances, will be distributed to the affected taxing entities."

The City and the successor agency remitted the funds to the county auditor-controller.

C. *Superior Court Proceedings*

The City and the successor agency (collectively the City) filed a petition for writ of mandate challenging the Department's disallowance of the February 2011 surplus funds transfer. They brought this action against the state, the Department, its director, the state controller, and the state controller's office (collectively the Department). The City contended the transfer was lawful when it was made and it remained lawful under the Dissolution Law.[3]

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[3] The City challenged two other determinations the Department made in the due diligence review, but it does not raise those challenges on appeal. Also, the City named the state controller and the state controller's office as defendants, but because there is no outstanding order by the state controller, we, as did the parties, will address only the due diligence review order issued by the Department. The City also named the affected local taxing agencies as real parties in interest. None of them appear in this appeal.

The City argued the transfer was lawful when it was made because section 33604 obligated the City to pay the surplus funds to itself upon the City Center project ceasing to function. It claimed the surplus funds vested in the City under section 33604. The City acknowledged section 33604 referred to an "agency" that ceased to exist as opposed to a redevelopment project and that the redevelopment agency existed at the time of the transfer, but the City contended that interpreting the word "agency" to mean the redevelopment agency was not a reasonable and common-sense interpretation. At the time the Legislature adopted section 33604, it allegedly did not contemplate that redevelopment agencies might create multiple project areas subject to different terms of existence. If the word "agency" was limited to the redevelopment agency, the City Center project's surplus funds would have sat unused potentially for decades until the agency ceased to exist because the agency could not use them for other projects. The City asserted the Legislature did not intend such a result.[4]

The City also argued the transfer remained lawful under the Dissolution Law. The transfer was an enforceable obligation of the former redevelopment agency because it was an obligation imposed by state law, specifically section 33604. Because it was imposed by law, the transfer was not the result of an agreement, contract, or arrangement between the City and its former redevelopment agency, arrangements AB 1484 deemed were not enforceable obligations. The transfer thus was not "unobligated" and was not available for other taxing agencies.

The trial court denied the City's petition. The court initially noted the City ignored section 33486, which allowed a redevelopment agency to merge project areas and comingle project area funds if significant blight remained in one of the areas and the

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[4] The Community Redevelopment Law (§ 33000 et seq.), the law which established and governed redevelopment agencies, and which section 33604 is a part, defines the term "agency" as "a redevelopment agency." (§ 33003.)

blight could be eliminated only by merging the areas. Consequently, the end of a project area did not automatically result in surplus funds remaining untouched until the redevelopment agency ceased to exist.

Setting aside the issue of merging areas, the trial court held the transfer was not lawful when it was made and it was not lawful under the Dissolution Law. The court rejected the City's construction of the term "agency" in section 33604 to mean "project area." Reading the terms synonymously for purposes of section 33604 would be contrary to the plain and defined meaning of "agency" throughout the redevelopment laws. While the Legislature enacted section 33604 many years before, it had not since amended the statute to substitute the words "project area" for "agency." The court found this indicative of the Legislature's intent.

The court also held that because the transfer was not an obligation imposed by section 33604, i.e., an enforceable obligation, the funds were subject to the "claw back" provisions as unobligated balances available for transfer to other taxing agencies.

The City challenges the trial court's ruling, again claiming the surplus funds transfer was lawful when it was made, and it remained lawful and an enforceable obligation under the Dissolution Law, all because of section 33604.[5]

DISCUSSION

I

Standard of Review

When interpreting the Dissolution Law, our review is de novo. We give no deference to the Department's interpretation. (*City of Tracy v. Cohen* (2016)

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[5] The City also challenges the trial court's reliance on section 33486's provision for merging project areas. The trial court, not the parties, first raised this issue, and it did so in its tentative ruling. Because we do not rely on section 33486 for our ruling, we do not address the City's contentions on this point.

3 Cal.App.5th 852, 860.) We will sustain the trial court's ruling if it is right upon any theory of law applicable to the case "regardless of the considerations which may have moved the trial court to its conclusion." (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.)

II

Enforceable Obligation

The City's entire case depends on whether section 33604 required the redevelopment agency to transfer the surplus funds to the City. If it did, as the City claims, then the City argues the transfer was an enforceable obligation because it was an obligation imposed by state law, a type of obligation the Dissolution Law deems to be an enforceable obligation. The City provides no justification other than section 33604 for why the transfer should qualify as an enforceable obligation.

Unfortunately for the City, whether section 33604 required the transfer is irrelevant to our resolving the case. The transfer did not qualify as an enforceable obligation under the Dissolution Law's express terms no matter what section 33604 states. The Dissolution Law deemed the transfer to be unauthorized. Any transfer that occurred between the redevelopment agency and the City after January 1, 2011, was unauthorized. (§§ 34167.5, 34171, subd. (n).) The redevelopment agency transferred the funds on February 15, 2011.

More significantly, the Dissolution Law expressly deemed any "agreements, contracts, or arrangements" between the redevelopment agency and the City not to be enforceable obligations. (§ 34171, subd. (d)(2).) The statute provides some exceptions to this rule, but none of them apply here. (§ 34171, subd. (d)(2), (3).) The formal approval of the transfer by the redevelopment agency's board and the City's city council constitutes an agreement or arrangement between the two entities which the Dissolution Law voids.

Even if section 33604 required the redevelopment agency to transfer the surplus funds to the City—a point we do not concede—the Dissolution Law rendered section 33604 unenforceable. To the extent a provision of the Community Redevelopment Law, such as section 33604, conflicts with the Dissolution Law, the Dissolution Law controls. (§ 34189, subd. (b).) Section 33604 conflicts with the Dissolution Law. It vests a redevelopment agency's surplus funds in the community (in this case, the City) upon the agency's ceasing to function, or, as the City constructs the statute, upon a project area's ceasing to function. By contrast, the Dissolution Law voided any transfers the redevelopment agency made to the City in 2011 while the redevelopment agency was still in existence, declared such transfers to be unencumbered, and required the successor agencies to remit those funds to the county auditor-controller as opposed to the community. (§§ 34172, subd. (a)(1); 34173, subds. (b), (i); 34175, subd. (b); 34177, subd. (d).) Because the Dissolution Law rendered void certain transfers section 33604 might have otherwise authorized, its provisions supersede section 33604.

Thus, no matter how section 33604 might be interpreted, the Dissolution Law deemed the redevelopment agency's transfer of surplus funds to the City not to be an enforceable obligation. The transfer was an unauthorized arrangement between the redevelopment agency and the City. As a result, the funds, all of them surplus, were unencumbered, and the Dissolution Law required the City to remit them to the county auditor-controller. (§ 34177, subd. (d).)

The City raises a number of arguments to claim the transfer was an enforceable obligation by means of section 33604. It argues the Legislature intended the claw back procedures be used only to recapture funds "that were wrongfully transferred by redevelopment agencies in the first place." It asserts there is no evidence the Legislature intended to invalidate retroactively any transfers that were legally required and legitimately made when they occurred.

The City also asserts that section 34171, subdivision (d)(2)'s express exclusion of agreements, contracts, or arrangements between former redevelopment agencies and their sponsoring entities as enforceable agreements has nothing to do with this case. The City argues subdivision (d)(2) does not apply to actions section 33604 obligated the City to take. It applies only to voluntary obligations. That the former redevelopment agency's board and the City's city council took formal action to approve the transfer did not convert their performance of a statutory obligation under section 33604 into an agreement, contract, or arrangement.

Also, the City claims there is no conflict between section 33604 and the Dissolution Law because 33604 is consistent with the Dissolution Law's definition of an "enforceable obligation" as an obligation imposed by state law. The City argues the surplus funds were not unobligated because section 33604 legally restricted their use and required them to be paid to the City.

We disagree with the City's arguments. They ignore that section 34171 specifically and categorically excludes agreements and arrangements made in 2011 between redevelopment agencies and their sponsoring entities from being enforceable obligations, whether they were legitimate or wrongful, voluntary or compulsory. "On its face, the statutory exclusion of agreements [with sponsoring agencies] from the definition of 'enforceable obligations' identifies the extent of the exclusion: 'For purposes of this part . . . .' (§ 34171(d)(2).) 'This part' is the Dissolution Law, set forth in part 1.85 of division 24 of the Health and Safety Code [the dissolution component]. Therefore, for purposes of the Dissolution Law, the exclusion in section 34171(d)(2) applies to *all* 'agreements, [contracts or arrangements] . . . between the . . . [city] . . . that created the redevelopment agency and the former redevelopment agency' (§ 34171(d)(2)) . . . ." (*County of San Bernardino v. Cohen* (2015) 242 Cal.App.4th 803, 815, italics added.)

Moreover, section 34171's specific exclusion of sponsor agreements in subdivision (d)(2) as enforceable obligations controls over the more general definition of

an enforceable obligation in subdivision (d)(1)(C) as including an obligation imposed by state law. In other words, assuming section 33604 required the redevelopment agency to transfer the funds to the City, that imposition of law is an enforceable obligation under the Dissolution Law unless a more specific provision in the Dissolution Law excludes it from being an enforceable obligation. "If inconsistent statutes cannot otherwise be reconciled, 'a particular or specific provision will take precedence over a conflicting general provision.' (*People v. Vessell* [(1995) 36 Cal.App.4th 285,] 289, citing Code Civ. Proc., § 1859 ['In the construction of a statute . . . when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.']; see also Civ. Code, § 3534 ['Particular expressions qualify those which are general.'].) The Supreme Court has confirmed, ' "where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment. [Citations]." ' (*People v. Gilbert* (1969) 1 Cal.3d 475, 479.)" (*Stone Street Capital, LLC v. California State Lottery Com.* (2008) 165 Cal.App.4th 109, 119.)

This principle refutes the City's argument. The definition of "enforceable obligation" on which the City relies, "obligations imposed by state law" (§ 34171, subd. (d)(1)(C)), would, standing alone, include the arrangement transferring the surplus funds from the redevelopment agency to the City, assuming that section 33604 obligated the redevelopment agency to make the transfer. However, excluding sponsor agreements from being considered as enforceable obligations does not exclude all obligations state law may have imposed on the redevelopment agency from being enforceable obligations. Thus, even if section 33604 required the redevelopment agency to transfer the surplus funds to the City, the agreement or arrangement to do so would not qualify as an enforceable obligation because the more-specific provision of section 34171, subdivision

(d)(2), deems such an arrangement with a sponsoring agency not to be an enforceable obligation.

As a matter of law, therefore, the redevelopment agency's transfer of surplus funds to the City in February 2011 is not an enforceable obligation for purposes of the Dissolution Law. The Department correctly determined as much and rightly required the City to remit the funds. Because we conclude the surplus funds transfer cannot be an enforceable obligation, we need not address the City's other arguments regarding the validity of the transfer under section 33604 before the Dissolution Law was adopted, the interpretation of section 33604, and whether the City would be entitled to prejudgment interest had we determined the transfer was an enforceable obligation. For the same reason, we deny the Department's request to take judicial notice of the Community Redevelopment Act (Stats. 1945, ch. 1326) as moot.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to the respondents who appeared in this appeal. (Cal. Rules of Court, rule 8.278(a).)

HULL, Acting P. J.

We concur:

MAURO, J.

HOCH, J.